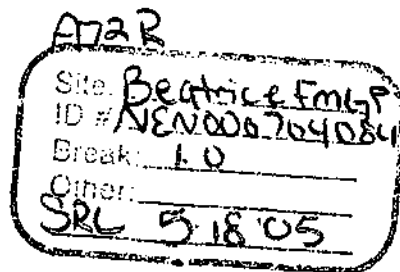




UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VII  
901 NORTH 5TH STREET  
KANSAS CITY, KANSAS 66101

MAY 18 2005



NOTICE OF POTENTIAL LIABILITY  
OFFER TO NEGOTIATE FOR AN ENGINEERING  
EVALUATION AND COST ANALYSIS  
FEDERAL EXPRESS NEXT DAY DELIVERY

City of Beatrice  
c/o James Bauer  
City Administrator  
400 Ella Street  
Beatrice, NE 68310-0279

Dear Sir:

Re: Beatrice Gas & Power Company  
Former Manufactured Gas Plant Site ("Site")  
Beatrice, Gage County, NE

This letter notifies the city of Beatrice ("the City") of potential liability, as defined by Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607(a), as amended (CERCLA), that it may incur or may have incurred with respect to the above- referenced Site. This letter also notifies the City of forthcoming response activities at the Site, which it may be asked to perform or finance at a later date.

NOTICE OF POTENTIAL LIABILITY

The United States Environmental Protection Agency (EPA) has documented the release or threatened release of hazardous substances, pollutants, or contaminants at the Site. The EPA has spent, or is considering spending, public funds on actions to investigate and control such releases or threatened releases at the Site. Unless EPA reaches an agreement under which a potentially responsible party (PRP) or parties will properly perform or finance such actions, EPA may perform these actions to Section 104 of CERCLA.

Under Section 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606(a) and 9607(a), Section 7003 of the Response Conservation and Recovery Act, 42 U.S.C. § 6973, and other laws, PRPs may be obligated to implement response actions deemed necessary by EPA to protect health, welfare, or the environment, and may be liable for all costs incurred by the government in responding to any release or threatened release at the Site. Such actions and costs may include, but are not limited to, expenditures for investigating, planning, response, oversight, and

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SUPERFUND RECORDS



enforcement activities. In addition, PRPs may be liable for damages to natural resources. The EPA may issue an administrative order pursuant to Section 106(a) of CERCLA to require PRPs to commence cleanup activities. Failure to comply with an administrative order issued under Section 106(a) of CERCLA after August 19, 2002, may result in a fine of up to \$31,500 per day under Section 106(b) of CERCLA, or imposition of triple damages, under 107(c)(3).

The EPA has evaluated information in connection with the investigation of the Site. Based on this information, EPA believes the City may be a PRP with respect to this Site. PRPs under CERCLA include current and former owners and operators of the Site as well as persons who arranged for disposal or treatment of hazardous substances sent to the Site, or persons who accepted hazardous substances for transport to the Site. By this letter, EPA notifies the City of its potential liability with regard to this matter and encourages it to voluntarily perform or finance those response activities that EPA determines are necessary at the Site.

In accordance with CERCLA and other authorities, EPA already has incurred certain costs in response to conditions at the Site. The EPA may expend additional funds for response activities at the Site under the authority of CERCLA and other laws.

#### SITE RESPONSE ACTIVITIES

To date, EPA has conducted a Preliminary Assessment and Site Inspection ("PA/SI") in order to gain a basic understanding of any risks posed to human health and/or the environment by release or threatened release from the Site. EPA is planning to conduct Engineering Evaluation and Cost Analysis ("EE/CA") at the Site to identify and evaluate alternatives for a removal action to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants into the soil, surface water, and/or groundwater.

#### DRAFT ADMINISTRATIVE ORDER

As it is generally EPA's preference to negotiate the performance of a response action by PRPs prior to the issuance of a unilateral order or the performance of a fund-lead action, a copy of EPA's draft Administrative Order on Consent ("AOC") for performance of an EE/CA is enclosed. This information is provided to assist the City in negotiation with EPA. Work conducted by PRPs must be conducted according to a signed administrative order and an EPA-approved work plan.

The EPA has committed resources in an effort to fully negotiate the terms of a final AOC by June 6, 2005. In order to accomplish this, EPA requests that the City provide to Kevin Larson at the address provided on page 4, two weeks after receipt of this letter, a written indication of its willingness to negotiate the AOC.

### DECISION NOT TO USE SPECIAL NOTICE

Under CERCLA Section 122(e), EPA has the discretionary authority to invoke special notice procedures to formally negotiate the terms of an agreement between EPA and PRPs to conduct or finance response activities. Use of these special notice procedures triggers a moratorium on certain EPA activities at the Site while formal negotiations between EPA and the PRP or PRPs are conducted.

In this case, EPA has decided not to invoke the Section 122(e) special notice procedures. Time-related concerns and commitment of EPA resources have contributed to EPA's decision not to invoke special notice procedures.

### DEMAND FOR PAYMENT

In accordance with CERCLA, EPA has already undertaken certain actions and incurred certain costs in response to conditions at the Site. These response actions include the conduct of the PA/SI. The cost to date of the response actions performed at the Site through EPA funding is approximately \$154,697.45. In accordance with Section 107(a) of CERCLA, demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 or under any other provisions of law. You are potentially liable for additional costs plus interest if EPA conducts additional activities at the Site.

### INFORMATION TO ASSIST RESPONSIBLE PARTIES

The EPA would like to encourage good faith negotiations between the PRPs and EPA, and among the PRPs. A similar letter with the attached draft AOC is being sent to Aquila, Inc. 20 W. 9<sup>th</sup> Street, Kansas City, MO 64105.

### ADMINISTRATIVE RECORD

Pursuant to Section 113(k) of CERCLA, EPA must establish an administrative record that contains documents that form the basis of EPA's decision on the selection of a response action for a site. The administrative record files, which contain the documents related to the response action selected for this Site, will be available to the public for inspection and comment. The primary location is generally the EPA Regional Office.

### PRP RESPONSE AND EPA COMMENT

The City is encouraged to contact EPA within two weeks after receipt of this letter, to indicate its willingness to participate in negotiations at this Site. If EPA does not receive a timely response, EPA will assume the City does not wish to negotiate a resolution of its liabilities in connection with the response, and that it has declined any involvement in performing the


response activities. The City may be held liable under Section 107 of CERCLA for the cost of the response activities EPA performs at the Site and for any damages to natural resources.

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be and cannot be relied upon as final EPA positions on any matter set forth herein. The response to this notice letter should be sent to:

Kevin Larson  
SUPR/EFLR  
U.S. Environmental Protection Agency, Region 7  
901 North 5<sup>th</sup> Street  
Kansas City, Kansas 66101

If you have any questions pertaining to this matter, please contact Barbara Peterson in the Office of Regional Counsel, at (913) 551-7277.

Sincerely,

  
Cecilia Tapia  
Director  
Superfund Division

Enclosure